

## **REMARKS**

### ***Claim Status***

Claims 1-20 were initially filed. Claims 28-30 were withdrawn. Claims 1-27 are currently pending. Claims 1, 9, 12, 13, 19, 25 and 27 have been amended above.

### ***Specification***

The examiner has objected to the specification for having an error in the numeration of the element "restraint mechanism". The applicant has amended this error above and corrected several other misspellings at the same time. Therefore the applicant respectfully requests that the examiner withdraw the instant objection.

### ***Drawings***

The examiner has objected to the drawings as not showing the "plurality of comb-like slits"; "at least one exoskeletal shaped member"; and "at least one exoskeletal shaped guide".

As for the "plurality of comb-like slits", the applicant disagrees with the examiner. Figure 4 clearly shows the plurality of comb-like slits. However, the applicant recognizes that figure 4 (and paragraph 55) does not contain adequate numeration to clearly identify the plurality of comb-like slits as such. The applicant has herein submitted substitute drawing that have the correct numeration of figure 4 such that the plurality of comb-like slits is identified as element 14 (and paragraph 55 is amended above to reflect the same).

As for the "at least one exoskeletal shaped member", the applicant respectfully disagrees with the examiner. Figure 5 clearly shows an exoskeletal partial circumference, as described in paragraph 56, in which there is an exoskeletal shaped member, i.e. additional elongated shaped members. However, the applicant is cognizant of the fact this

change is nomenclature is confusing and has therefore amended claims 9 above to change “at least one exoskeletal shaped member” to “at least one additional elongated shaped member”. This modification of claim 9 is not an addition of new matter in that figure 5 clearly illustrates more than one elongated shaped member, the plurality of which forms an exoskeletal shaped partial circumference.

As for “at least one exoskeletal shaped guide”, the applicant has amended claim 25, above, to clarify that one or more shaped guides comprise at least one *exoskeletal shape* as is clearly illustrated in figure 5 and discussed in paragraph 56.

In light of the above amendments to the specification, claims and drawings, the applicant respectfully requests that the examiner withdraw the instant objection to the drawings

### ***Claim Objections***

The examiner has objected to the claims for the following reasons:

In Claim 12, line 4, “having cross member” should be ~~–having a cross member–~~; line 6, “object” should be ~~–object–~~.

In claim 13, line 5, the phrase “various shaped guides” should be ~~–the one or more shaped guides–~~so as to conform to previous language in line 3.

In Claim 14, line 2, “releasable connection” is not referenced in the specification.

In Claim 15, line 2, “releasable simultaneous connection” is not referenced in the specification.

The applicant has amended claims 12 and 13 above to comport with the examiner request. Further, the applicant has amended paragraph 56 to include the reference for the “releasable connection” and “releasable simultaneous connection” for claims 14 and 15.

This amendment to claim 56 is not an addition of new matter since this text is found in the Summary of the Invention paragraph 24.

Therefore, the applicant respectfully requests that the examiner withdraw the instant objection.

***Claim Rejections – 35 U.S.C. § 102***

The examiner has rejected claim 1-4, 11, 13-20, and 27 as being anticipated by O'Brien et al. (US Patent 2,798,354).

As to claims 1 and 13, the examiner feels that O'Brien discloses a tree shaping guide (Figs 1-9) comprising an elongated support (element 12 of Figs 3 and 4) positionable adjacent an object to be shaped; one shaped guide (element 100, 50, 52 of Figs 3 and 7) and a connection mechanism (element 40 and 42 of Figs 4 and 7) connecting the shaped guide to the elongated support, which comprises movement elements (edges of element 100 of Fig 7) to allow the shaped guide to move relative to the elongated support; wherein the shaped guide allow movement along a shape path (movement of element 100 in Fig 7) and enables a user to operate a cutting mechanism to shape an object; and , wherein the combination of the shaped guide an support enable a user to operate a cutting mechanism to shape an object.

Anticipation is the complete disclosure in a single prior art source of a device substantially identical to the claimed invention. Harris v. NRM Corp., 191 USPQ 643 (1976, ND Ohio). An invention is anticipated when “all of the same elements are found in exactly the same situation and united in the same way to perform the function in a single prior art reference.” Schroeder v. Owens Corning Fiberglas Corp., 514 F2d 90, 185 USPQ 723 (1975, CA9 Cal). (Citing Walker v. General Motors Corp. (CA9 Cal) 362 F2d 56, 58,

149 USPQ 472, 473, 474. An invention is not anticipated when the alleged anticipating device is substantially different in construction and operation from the claim invention. Fuller v. Yentzer, 94 US 299, 24 L. Ed. 107 (1877).

With regard to claim 1, in the instant matter the applicant has amended claims 1 to further specify that the shaped guide further comprises “two spaced posts and a cross member with a mechanism substantially centrally located such that the restraint mechanism can centrally fit around and be restrained to an object to be shaped extending between the two spaced posts for strength”. According, claim 1 now has an element that is not found in O’Brien, specifically the restraint mechanism substantially centrally located. Further, this additional limitation cannot be read onto the O’Brien device since the O’Brien device is mounted on wheels and is designed for moving operation. As such it teaches away from an element that ties (restrains) to the object to be shaped and the shaping guide. Therefore, O’Brien does not contain all of the same elements working in the same situation and united in the same way to perform all of the same functions and cannot anticipate the applicant’s claims 1, as now amended.

With regard to claim 13, the applicant’s claim 13, as now amended, includes the limitation that the shaped guide further comprises “two spaced posts and a cross member with a restraint mechanism substantially centrally located such that the restraint mechanism can centrally fit around and be restrained to an object to be shaped extending between the two spaced posts for strength”. According, claim 13 now has an element that is not found in O’Brien, specifically the restraint mechanism substantially centrally located. Further, this additional limitation cannot be read onto the O’Brien device since the O’Brien device is mounted on wheels and is designed for moving operation. As such it teaches

away from an element that ties (restrains) to the object to be shaped and the shaping guide. Therefore, O'Brien does not contain all of the same elements working in the same situation and united in the same way to perform all of the same functions and cannot anticipate the applicant's claim 13, as now amended.

As to claim 2, the examiner feels that O'Brien further discloses an elongated support as a telescopic post with the shaped guide being mounted on the top end of the post. The applicant has patentably distinguished claim 1 from O'Brien above, therefore, since claim 2 properly depends from an independent claim that is not anticipated by O'Brien, it cannot be anticipated by O'Brien.

As to claims 3 and 4, the examiner feels that O'Brien discloses the elongated support on a stand with movement mechanism. The applicant has patentably distinguished claim 1 from O'Brien above, therefore, since claims 3 and 4 properly depend from an independent claim that is not anticipated by O'Brien, they also cannot be anticipated by O'Brien.

As to claims 11 and 27, the examiner feels that O'Brien discloses a cutting mechanism slidable along the shaped guide. The applicant has patentably distinguished claims 1 and 13 from O'Brien above, therefore, since claims 11 and 27 properly depend from independent claims that are not anticipated by O'Brien, they also cannot be anticipated by O'Brien.

As to claim 14, the examiner feels that O'Brien discloses the connection mechanism allowing releasable connection between the one or more shaped guides and the support. The applicant has patentably distinguished claim 13 from O'Brien above,

therefore, since claim 14 properly depends from an independent claim that is not anticipated by O'Brien, it cannot be anticipated by O'Brien.

As to claim 15, the examiner feels that O'Brien discloses the connection mechanism allowing releasable connection simultaneously between a plurality of shaped guides and the support. The applicant has patentably distinguished claim 13 from O'Brien above, therefore, since claim 15 properly depends from an independent claim that is not anticipated by O'Brien, it cannot be anticipated by O'Brien.

As to claim 16, the examiner feels that O'Brien discloses the connection mechanism allowing separate movement of the plurality of shaped guides. The applicant has patentably distinguished claim 13 from O'Brien above, therefore, since claim 16 properly depends from an independent claim that is not anticipated by O'Brien, it cannot be anticipated by O'Brien.

As to claim 17, the examiner feels that O'Brien discloses the connection mechanism allowing releasable connection between the [two] or more shaped guides and the support. The applicant has patentably distinguished claim 13 from O'Brien above, therefore, since claim 17 properly depends from an independent claim that is not anticipated by O'Brien, it cannot be anticipated by O'Brien.

As to claim 18, the examiner feels that O'Brien discloses the support as an elongated telescopic post with the shaped guide being mounted on the top end of the post. The applicant has patentably distinguished claim 13 from O'Brien above, therefore, since claim 18 properly depends from an independent claim that is not anticipated by O'Brien, it cannot be anticipated by O'Brien.

As to claims 19 and 20, the examiner feels that O'Brien discloses the elongated support on a stand with movement mechanisms. The applicant has patentably distinguished claim 13 from O'Brien above, therefore, since claims 19 and 20 properly depend from an independent claim that is not anticipated by O'Brien, they cannot be anticipated by O'Brien.

For the above reasons, the applicant respectfully requests the examiner to withdraw the instant rejection.

The examiner has rejected claims 13 and 14 as being anticipated by Uhor (US 3,487,614).

As to claim 13, the examiner feels that Uhor discloses a tree shaping guide comprising a support positionable adjacent an object to be shaped; one shape guide; and a connection mechanism connecting the shaped guide to the elongated support, wherein the combination of shaped guide and support enables a user to operate a cutting mechanism to shape the object.

A rejection for anticipation requires the presence in a single prior art reference disclosure of each and every element of the claimed invention. Lindeman Maschinenefabrik GmbH v. American Hoist & Derrick, Co., 730 F.2D 1452, 221 USPQ 481, 485 (Fed. Cir. 1984). Further, the reference must generally place the needed subject matter supporting the anticipation rejection in the public domain before the date of invention. In re Zenitz, 33 F.2d 924, 142 USPQ 158, 160 (C.C.P.A. 1964). It follows from this second element that a reference does not legally anticipate the claimed subject matter if it is found not to be sufficiently enabling, in other words, if it does not place the

subject matter of the claims within the possession of the public. In re Wilder, 429 F.2d 447, 166 USPQ 545 (C.C.P.A. 1970).

The applicant has amended claim 13 above to specify that the shaped guide further comprises “two spaced posts and a cross member with a restraint mechanism substantially centrally located such that the restraint mechanism can centrally fit around and be restrained to an object to be shaped extending between the two spaced posts for strength”. Uhor only teaches or discloses the restraint of the shaped guide, col 5., lines 1-19. Thus, Uhor does not put a restraint mechanism substantially centrally located such that the restraint mechanism can centrally fit around and be restrained to an object to be shaped in the public domain and therefore does not anticipate claim 13, as now amended.

As for claim 14, the examiner feels that Uhor discloses the connection mechanism allowing releasable connections. The applicant has patentably distinguished claim 13 from Uhor above, therefore, since claim 14 properly depends from an independent claim that is not anticipated by Uhor, it cannot be anticipated by Uhor.

For the above reasons, the applicant respectfully requests the examiner to withdraw the instant rejection.

***Claim Rejections – 35 U.S.C. § 103***

The examiner has rejected claims 5-10 and 21-26 as being obvious over O'Brien in view of Uhor.

As for claim 5, 7, 9, 21, 23, and 25, the examiner relies on O'Brien as above and relies upon Uhor for disclosing an elongated shaped member with a curved portion forming a partial circumference of a sphere, an exoskeletal shaped member and the connection allowing pivotal movement. The examiner feels that it would have been obvious to one of



ordinary skill in the art at the time of the invention to modify the guide of O'Brien by using the elongated shaped member of Uhor so as to readily control the trimming and shaping of the shrub.

The applicant respectfully disagrees with the examiner. Independent claims 1 and 13 have been distinguished from O'Brien above. While Uhor teaches an elongated shaped member with a curved portion, forming a partial circumference of a sphere and a connection allowing pivotal movement there is no teaching or suggestion in either Uhor or O'Brien, either singly or in combination, for a plurality of curve shaped guides (as is allowed by claim 13, as now amended). Therefore O'Brien in view of Uhor cannot render the applicant's invention obvious.

As for claim 6, the applicant has amended claim 1 above to distinguish it from O'Brien. Further, there is no teaching or suggestion in O'Brien or Uhor, either singly or in combination, for a plurality of comb-like slits for allowing parts of the object to protrude and further allow trimming. Therefore O'Brien in view of Uhor cannot render the applicant's invention obvious.

As for claim 22, as briefly discussed above, there is no teaching or suggestion in either Uhor or O'Brien, either singly or in combination, for comb-like slits in at least one of the plurality of curve shaped guides (as is required by claim 22 as now amended). In fact there is no mention or suggestion in either Uhor or O'Brien of comb-like slit that are used to allow parts of the object to protrude through the slits and enable a user to operate a cutting mechanism to shape an object. Therefore O'Brien in view of Uhor cannot render the applicant's invention obvious.

As for claims 8 and 24, the examiner relies upon Uhor to provide a teaching of a plurality of elongated shaped members so as to more quickly finish the job of trimming and shaping the shrub. There is no teaching or suggestion in either Uhor or O'Brien, either singly or in combination, for a plurality of curve shaped guides (as is allowed by claim 13, as now amended) or comb-like slits in the shaped guide (as is required by claim 1 as now amended). Since claims 8 and 24 properly depend upon claims that are patentably distinguishable from the combination of O'Brien in view of Uhor, they cannot render claims 8 and 24 obvious to one of ordinary skill in the arts.

For the above reasons, the applicant respectfully requests the examiner to withdraw the instant rejection.

The examiner has rejected claim 12 as being obvious over Uhor in view of Suter (CH 599744).

The applicant respectfully disagrees with the examiner.

Uhor discloses a tree shrub shaping device comprising an elongated support comprising two spaced posts, the posts being positionable adjacent an object to be shaped and having a cross member extending between the two spaced posts for strength, and, a shaped substantially semi-circular curved guide connecting the shaped guide to a top of the elongated posts and further comprising moment element that allow the shaped guide to move pivotally relative to the elongated support such that the shaped guide follows a ball shape around the object and that is employable to enable a user to operate a cutting mechanism to shape the object.

Uhor does not teach or suggest, either alone or in combination with Suter an elongated linear foot that forms an inverted T shape. Uhor teaches a disk shaped foot and

Suter teaches wheels (as does O'Brien). Further there is no teaching or suggestion in Uhor, either alone or in combination with Suter, of the cross member further comprising a restraint mechanism substantially located such that the restraint mechanism can fit around and be restrained to an object to be shape and center the shaping guide. The element that the examiner cites as being an object restraint (element 88 in figure 1) is in fact straps for locking the support arm into position (col. 5, lines 2-19). The support arm holds the shaped guide not the object to be shaped. Therefore, Uhor actually teaches away from the restraint mechanism of the applicant's invention. Suter does not even have a cross member, and therefore cannot even suggest a cross member that further comprises a restraint mechanism. Therefore, Uhor in combination with Suter does not teach or suggest all of the elements of the applicant's invention, specifically a linear foot that forms an inverted shape or a restraint mechanism that is centrally located on the cross member and cannot render the applicant's claim 12 obvious.

For the above reason, the applicant respectfully requests the examiner to withdraw the instant rejection.

The examiner has rejected claim 15 as being obvious over Uhor with the limitation of a plurality of elongated shaped member that are releasable simultaneously. The applicant has amended claim 13 above to include the limitation that comprising two spaced posts and a cross member with a restraint mechanism substantially centrally located such that the restraint mechanism can centrally fit around and be restrained to an object to be shaped extending between the two spaced posts for strength. There is no teaching or suggestion in Uhor for the restraint mechanism. Uhor, at most, teaches restraint of the

Uhor shaping guide. Therefore, Uhor does not put the invention of claim 15 in the public domain and does not render it obvious.

For the above reason, the applicant respectfully requests the examiner to withdraw the instant rejection.

Respectfully submitted,

Date: August 26, 2005

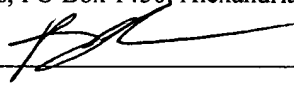


Kristofer Halvorson, Reg. No. 39,211  
The Halvorson Law Firm, P.C.  
Attorneys for Applicant  
1757 E. Baseline Rd., Ste 130  
Gilbert, Arizona 85233  
(480) 892-2037

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail, postage paid, in an envelope address to  
Box Non-Fee amendment, Assistant Commissioner for Patents, PO Box 1450, Alexandria VA 22313-145.

On August 26, 2005

By: \_\_\_\_\_